

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

* * *

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	18-CR-229-1
Plaintiff	:	
	:	James A. Byrne Courthouse
v.	:	Philadelphia, Pennsylvania
	:	
	:	May 20, 2021
	:	
RYAN ANDREW DAVIS	:	
	:	EXCERPT OF
Defendant	:	SENTENCING HEARING

- - - - -

BEFORE THE HONORABLE GERALD J. PAPPERT
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Government: MICHELLE ROTELLA, ESQUIRE
UNITED STATES ATTORNEY'S OFFICE
615 Chestnut Street, Suite 1250
Philadelphia, Pennsylvania 19106

For the Defendant: JOHN H. PAVLOFF, ESQUIRE
SCHINDLER LAW GROUP, LLC
810 East Baltimore Pike
Kenneth Square, Pennsylvania 19348

STEPHEN P. PATRIZIO, ESQUIRE
DRANOFF & PATRIZIO, P.C.
2 Penn Center 1205
John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19102

Deputy Clerk/
ESR Operator: Jeffrey Lucini

- - -

TRANSCRIBED BY: Drummond Transcription Service
Haddon Heights, New Jersey 08035

Proceedings recorded by electronic sound recording,
transcript produced by computer-aided transcription
service.

1 (Proceedings in progress in open court at 3:42:31 p.m.
2 in the James A. Byrne United States Courthouse, Courtroom 11A.)

3 THE COURT: All right, Mr. --

4 MR. PATRIZIO: Judge, if I could just --

5 THE COURT: -- Patrizio, I -- I know, we -- we have a
6 lot of input here from the witness, but now I would like to give
7 you an opportunity to make some remarks on -- on behalf of --

8 MR. PATRIZIO: Thank you.

9 THE COURT: -- your client and after which if your
10 client wishes, I would like to hear from him --

11 MR. PATRIZIO: Yes, sir.

12 THE COURT: -- as well.

13 MR. PATRIZIO: Judge, if -- if I could just
14 acknowledge the people --

15 THE COURT: Of course.

16 MR. PATRIZIO: -- that are here today, that have not
17 testified, other than Mr. Justino?

18 Bill Davis, Ryan's grandfather, could you just stand
19 up, sir?

20 THE COURT: They don't have to stand up --

21 MR. PATRIZIO: All right.

22 THE COURT: -- there is not that many --

23 MR. PATRIZIO: All right.

24 THE COURT: -- I can see them all.

25 MR. PATRIZIO: And Gale Davis, Ryan's grandmother,

1 that's on the paternal side, yes?

2 THE DEFENDANT: Hm-hmm.

3 MR. PATRIZIO: And Ryan's mom Robin Herd.

4 THE COURT: Ma'am.

5 MR. PATRIZIO: And Ryan's grandmother on the maternal
6 side, Maryanne and Kathy Tevelson and she is Paul Justino's
7 aunt.

8 THE COURT: Yes.

9 MR. PATRIZIO: And Carol Justino, Paul Justino's mom.

10 THE COURT: Yes.

11 MR. PATRIZIO: And Mr. Justino, the -- I'd just ask --

12 THE COURT: And thank you all, again, everyone who is
13 here did write a letter and I appreciate receiving it, I've read
14 them all very carefully, thank you for taking the time to write
15 to me.

16 MR. PATRIZIO: Okay.

17 THE COURT: Come on up, Mr. Patrizio.

18 MR. PATRIZIO: Thanks, Judge.

19 THE COURT: Yes.

20 MR. PATRIZIO: Judge, I am very mindful of the hour
21 and I am mindful of your giving us the opportunity to present
22 what we've presented here today. And -- and, Judge, I believe
23 that you've read all of -- not just the letters and the
24 accomplishments of Mr. Davis while he was incarcerated and I --
25 and --

1 THE COURT: I have read them.

2 MR. PATRIZIO: -- and --

3 THE COURT: Thank you, yes.

4 MR. PATRIZIO: -- to me, they are significant for --
5 for the purposes that have already been discussed by our
6 experts, but also I think they straight up demonstrate the
7 maturity and growth and acknowledgment of the defendant in terms
8 of a viewpoint toward remorsefulness, accepting responsibility
9 and going forward for the period of time that he has been
10 incarcerated and into the future. So, I would ask the Court to,
11 again, consider that as I know that you have done in reading
12 those.

13 My sentencing memorandum, Judge, highlights many of
14 the things that I would like to say to you, but I am not going
15 to, because I believe and I know that you have read them.

16 I guess, the main point that I would like to ask the
17 Court to consider is, knowing full well that you affirmed the
18 enhancements, but I extensively wrote about other courts' real
19 need for the overhauling and the not lockstep considerations of
20 all the provisions that put these sentences of child pornography
21 in --

22 THE COURT: On the high side.

23 MR. PATRIZIO: -- in the stratosphere of where I find
24 these.

25 And -- and I don't think, it's just idle chatter, it's

1 a whole lot of people from a whole lot of disciplines from
2 judges to congressmen to -- to -- but I know you're going to
3 consider that or I'd ask you to consider that in -- in varying
4 this sentence.

5 One of the last things I -- I'd want to say to you,
6 Judge is -- is that -- ah -- our adversary here Ms. Rotella,
7 chief of the unit that she -- she comes here with is without a
8 doubt an excellent adversary and a hard charger.

9 But in every case, she takes the position and her
10 allocution in -- in the documents, I feel just asking for the
11 top end of the guidelines with no deviation at all, it's just
12 not appropriate in this case.

13 And I -- I'd ask the Court to look at this defendant
14 as he stands here today at the age of twenty-four, I think
15 that's a significant factor in meting out a sentence.

16 I'd ask the Court to consider Mr. Justino, who has
17 stuck by him for this period of time and comes here today to
18 tell you that he is willing to stick by him upon his release.
19 And I think that's a positive, again, that doesn't call for a
20 guidelines sentence, but a variance.

21 To -- to incarcerate this man in any part of the
22 guideline range, I don't believe it is close to being necessary
23 for punishment, to send messages to other folks and, again,
24 that's in the literature.

25 And I'd ask the Court to consider the letter that my

1 client has written, which hopefully, he is going to stand before
2 you and say similar things, but I felt that his letter is the
3 lynchpin of who he is, what he is going forward.

4 The last point I want to make, Judge is, is that this
5 business about Max, my client is going to talk to you about that
6 a little bit.

7 I feel that this was a child-pornography case and I
8 feel very much that the Government has taken all the time to
9 talk about his prior contact offense and -- and I think that
10 that needs to be understood and separated for all of the reasons
11 that our experts have opined about and --

12 THE COURT: Well, I mean, there's -- look, I'd want to
13 put you at ease, I'm not sentencing Mr. Davis for the state
14 charges involving the abuse of his cousins, that's been resolved
15 in the state system --

16 MR. PATRIZIO: And Judge, I --

17 THE COURT: -- we're sentencing here for the -- the
18 violations of federal laws.

19 There have been extensive discussions about that prior
20 conduct for reasons that are, of course, appropriate to this
21 proceeding, such as the enhancement that we've discussed.

22 MR. PATRIZIO: Yes.

23 THE COURT: But more importantly, that conduct is very
24 relevant -- it was very relevant -- for both of your experts and
25 for Dr. Rodriguez to help the Court understand, among other

1 things, the chances for rehabilitation, the risk of recidivism
2 and the like. So, obviously, I will talk about the prior
3 offenses but it is all going to be in the context of informing
4 the sentence for the federal offenses.

5 I don't want you to worry that -- no one is in here
6 sentencing him, because anybody might think he got a light
7 sentence before, that matter is done.

8 MR. PATRIZIO: And I -- and I appreciate that, Judge.

9 It's just that when you read the Government's memo,
10 eleven of the pages of their memorandum are all about the
11 chapter and verse of what he reported and what he said, all
12 about that event and his deceitfulness and not forthcoming and
13 things. And I'd just ask you to parse that for the
14 considerations that I know, you will give it, but I just don't
15 want you to be inflamed by the -- the rhetoric that was supplied
16 in the Government's memorandum.

17 Lastly, Judge, Ms. Rotella points to a -- a number of
18 cases about sentencing within the guidelines. And, again, I
19 know that you are going to look at this individually and this
20 case alone, but she referenced one case, that I think, she tried
21 to compare it. And it was a case of yours called, Olimpi and
22 because -- because in that case, her argument is, a first-time
23 offender, guidelines.

24 And every one of these cases are driven by those facts
25 and -- and I -- I know that you probably remember this, but that

1 was a production case. And there -- in my opinion when you look
2 at the facts -- there was no comparison between this young man's
3 behavior and the guidelines sentence that you imposed in Olimpi,
4 in that case, that was a manufacturing case that was very, very
5 different in terms of scope and the actual facts.

6 Similarly, she -- she mentioned the Philip Ahr case
7 and she brought it up here in -- in this case. She referenced
8 that case as being a within-the-guidelines sentence and it
9 wasn't. Judge Baylson's sentence, a variance, it was 151 months
10 but the guidelines were over 200.

11 So, I -- I don't think that you are going to take the
12 bait, so to speak, that you're going to sentence him on this
13 case and not what another case or what a judge does. And I also
14 believe and I have confidence in this Court that it is going to
15 mete out a sentence for Mr. Davis for that conduct and for the
16 facts.

17 And I implore the Court, that this young man, twenty-
18 four years of age to sentence him to a within the guideline or
19 the top end of the guideline, I -- I'd just ask the Court to not
20 do that. I'd ask for a sentence of five years and my questions
21 were geared toward that, because five years is a very long time.

22 Five years and I believe and my client will -- may --
23 he may tell you -- but he's asked me to tell you to sentence him
24 or make a recommendation to Devens, because he's --

25 THE COURT: He's been incarcerated for over -- for

1 three years, already --

2 MR. PATRIZIO: Yes.

3 THE COURT: -- a five-year sentence would mean,
4 assuming good behavior, that he'd be released in a year and
5 three-quarters, roughly, a year --

6 MR. PATRIZIO: Not necessarily, Judge, because --

7 THE COURT: Is there any -- did you hear any expert
8 testimony here today from either side, that your client would be
9 in a position to give anybody any confidence that he has been
10 rehabilitated and that any shred of recidivism has been, maybe,
11 not eliminated but severely mitigated, I didn't hear any of
12 that. I don't think anything that your experts said would
13 support a sentence anywhere near five years.

14 Why -- why -- am I -- and if I'm wrong, tell me why?

15 MR. PATRIZIO: Well, I -- I'm not necessarily saying,
16 you're wrong but my understanding is, is that nobody wants to go
17 to Devens in these programs, because --

18 THE COURT: I am not talking about Devens --

19 MR. PATRIZIO: -- but --

20 THE COURT: -- I am talking about five years and the
21 fact that, we took several hours here today to hear from two
22 retained experts on behalf of the defense.

23 And I'm asking you to tell -- to point to something
24 that they said, where your own experts would support a five-year
25 sentence on the basis that they would think that at the

1 conclusion of another year and two-thirds, roughly --

2 MR. PATRIZIO: No, no one -- no one has said that,
3 Judge --

4 THE COURT: Thank you.

5 MR. PATRIZIO: -- no one has said that.

6 But -- but my only point is, is that what we know or
7 what my client knows is, is that if he is sentenced there, he's
8 got to complete those programs and as Dr. Rodriguez said, okay,
9 it depends upon the work that he puts in.

10 And what I am simply saying to the Court is, is that
11 this young man is dedicated to treatment, he is dedicated to
12 rehabilitation by wanting to go to a place that no sex offenders
13 want to go to voluntarily, okay. He's ready to do the heavy
14 lifting and to do the work that he now knows, he needs to do,
15 that he did not do in Delaware County.

16 THE COURT: Hmm.

17 MR. PATRIZIO: And -- and that -- that is my point,
18 Judge and --

19 THE COURT: Okay.

20 MR. PATRIZIO: -- and the same way that I'm saying,
21 five years, if you sentenced him to five years, he wouldn't be
22 out in two years, because that program is real work and real --
23 and real difficult. And there are three phases of it and it --
24 it takes longer than a year or two, it takes years to do that
25 program, Judge.

1 THE COURT: I -- I don't understand your point --

2 MR. PATRIZIO: My -- my --

3 THE COURT: -- you want a five-year sentence and yet,
4 you seem to be telling me, that even if I sentenced him to five
5 years, the BOP wouldn't release him unless they completed -- he
6 completed this program?

7 MR. PATRIZIO: That's correct, because --

8 THE COURT: That's correct?

9 MR. PATRIZIO: -- he would not, necessarily, get --

10 THE COURT: He would be re -- he would be retained in
11 federal prison beyond the date that I sentenced him to, who
12 would have the authority to do that?

13 MR. PATRIZIO: Well, I think, that's where this civil
14 commitment kicks in in terms of treatment, that's at least, my
15 understanding.

16 THE COURT: Okay.

17 MR. PATRIZIO: Judge, thank you for the -- for all the
18 time and --

19 THE COURT: Thank you, Mr. Patrizio.

20 MR. PATRIZIO: -- the patience.

21 And, again, I'd rely upon -- I know that you have read
22 my submissions --

23 THE COURT: I have.

24 MR. PATRIZIO: -- about disregarding the -- and the
25 need for the reworking of the guidelines --

1 THE COURT: I have --

2 MR. PATRIZIO: -- as it relates to the --

3 THE COURT: -- I understand your position.

4 MR. PATRIZIO: Thank you, Judge.

5 THE COURT: I would very much like to hear from Mr.

6 Davis.

7 THE DEFENDANT: May I come up there?

8 THE COURT: And he -- you may come up here and -- and
9 you're -- you're very free to remove you mask when speaking, if
10 you want to.

11 THE DEFENDANT: Okay.

12 THE COURT: And I have your letter in from of me,
13 which I have read.

14 THE DEFENDANT: Okay. Thank you for being so patient,
15 your Honor.

16 Ah, I want to thank my family for -- all for being
17 here today.

18 But first and foremost, I want to apologize to the
19 victims, I've hurt. At the time, I was involved in this
20 behavior, I never stopped to think about how serious my actions
21 were or the implications they had.

22 I rationalized my actions as being something private
23 and convinced myself, I was not harming anyone. I really only
24 now see, how wrong I was.

25 For my entire life, I have tried to be a perfect

1 student, friend, partner and son. I choose to bury my darkest
2 thoughts, desires and insecurities to maintain an image and to
3 avoid talking about my struggles.

4 I hid my loneliness, depression, sexuality and
5 suicidal thoughts that consumed me every day, thinking I was
6 only protecting myself, but in the end, I not only hurt myself,
7 but I hurt those around me. I hurt my family and all of the
8 innocent children in this case.

9 My crime shouldn't have happened. I went through
10 therapy before, we've discussed this. When going through
11 therapy in my teen years, I really did not take it seriously at
12 all and that is my fault. I didn't want to accept help, in all
13 honesty, I was ashamed, so, I didn't want to open up, I was
14 terrified.

15 Ah, really, the only way I saw a way out was to
16 cooperate and -- and get out of therapy as soon as possible and
17 try to move on with my life, I really wanted to bury it, but I
18 really see now that wasn't the best option for me at all or
19 anyone around me.

20 Ah, but I did really realize that you can't move on at
21 all, unless you accept responsibility for your actions and I am
22 trying to do that here today.

23 Ah, in my total disregard for the therapy and my own
24 immaturity in thinking I could fix things myself without the
25 assistance of a professional. And my superiority complex in

1 thinking I was above it all and didn't -- and didn't have to
2 cooperate the way I was supposed to, it really ultimately led me
3 to re-offend.

4 Ah, I have had a lot of time while incarcerated to
5 reflect, every day I am trying to work on self-awareness and
6 understanding how my actions led me to where I am today. My
7 desire to transform my life is stronger than ever. I really am
8 trying to work every day to become the young man, my family and
9 I can be proud of again.

10 I know I've disappointed them so many times and it
11 hurts my heart every single time and I -- even today -- I've
12 tried not to look at any of them in the eye, 'cause I don't want
13 to get too upset, but I appreciate them being here today.

14 I want to assure you and my family, that I will do
15 everything in my power to right my wrongs, I do want to use
16 every resource available during my incarceration and after to
17 work on self-improvement and rehabilitation.

18 I want to, again, apologize, because that's what the
19 important thing is here to the children and their families, it's
20 not just the children that are affected, I know their families
21 are as well. I am sorry for causing further pain and suffering,
22 I really never wanted to hurt anyone at all.

23 Ah, I want to apologize to my family again, for
24 putting you through so much shame, pain and sorrow and I've
25 acted so against the person I want to be.

1 Your Honor, I know I've committed an inexcusable crime
2 and I trust your judgment, so thank you for allowing me to
3 speak.

4 I will -- just want to touch on a two things, ah --

5 THE COURT: Yes, that was -- I know, you just reread
6 your letter to me, but I wanted to be sure that you knew that,
7 you know, what you say to me now isn't limited to what you wrote
8 me.

9 THE DEFENDANT: Yes.

10 THE COURT: And I want to give you a chance to say,
11 whatever else you'd like to say --

12 THE DEFENDANT: Yes.

13 THE COURT: -- beyond what you wrote in your letter,
14 so you're -- please --

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: -- please do.

17 THE DEFENDANT: Ah, I want to touch on the Max thing,
18 I feel like there's -- ah -- a lot of -- a lot on my part in
19 trying to pass the blame onto someone else and that's not what I
20 want to do at all.

21 I think in communicating, especially, to the
22 psychologist, my whole entire point of mentioning the person at
23 all, was trying to explain that this is a stepping stone that
24 led me to my actions, I am my own person, I can make my choices
25 and my own actions.

1 Ah, but that is really where I -- I tried to explain,
2 this is where I started in this conduct and misbehavior and that
3 led me to further on. So, I do not want to blame someone else
4 for my own actions. I am my own person and I can control my own
5 actions.

6 THE COURT: You do recognize, I assume and, you know,
7 you read your expert's reports.

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: It comes across much differently in the
10 reports.

11 THE DEFENDANT: Yes.

12 THE COURT: It -- it -- did they misunderstand what
13 you were saying to them, because their reports read to me, as
14 though Max -- Max got you -- Max convinced you to do this and
15 then, Max got you hooked on the child porn.

16 THE DEFENDANT: I think where it was misconstrued is
17 combining the two cases together that, I did in my prior case
18 put a lot of blame onto this person, I cannot blame this person
19 for my current case.

20 Ah, my activities with this person, ultimately, led me
21 to make certain decisions, but really, that was me kind of
22 trying to explain and my mindset of -- my involvement with this
23 person in my prior case, not necessarily this case, your Honor.

24 THE COURT: I want to ask you this once and you have
25 one chance to -- to answer me and, obviously, you're under oath

1 as has you know.

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Does Max really exist?

4 THE DEFENDANT: Yes, he does, your Honor.

5 THE COURT: What is his name?

6 THE DEFENDANT: Max Marsh. And I have his user name
7 and I have reported his user name back at my juvenile
8 adjudication.

9 THE COURT: M-a-r-s-h?

10 THE DEFENDANT: Yes.

11 THE COURT: Why was -- why did you call him at various
12 times, Matt or Mike?

13 THE DEFENDANT: I think that was -- I -- to be
14 completely honest, I can't remember my entire interview with the
15 people on that date, it was absolutely terrifying, so I don't
16 know if I said -- talked out of place. I don't know if things
17 were written down wrong, I can't tell you that.

18 But I can tell you with a hundred percent certainty
19 that this person has existed and that this person has existed
20 from the very beginning. And it's not someone I'm trying to
21 make up now as excuses for my actions at all.

22 THE COURT: Did -- did you delete any and all evidence
23 of any electronic communication with this person? It's my
24 understanding that law enforcement was not able to find any and
25 as you know, they are pretty good at finding stuff that you

1 thought you had deleted.

2 THE DEFENDANT: Ah, law enforcement was given my cell
3 phone in my prior conviction due to a search warrant even before
4 my conviction. They had all of the accessability to any of my
5 chats with Max. They had the user name, MaxMarsh105 and my
6 lawyer has that information. And that was told to Officer Tice
7 in an interview to him. All of that information was given to
8 the state. I am not sure why that information ever even came up
9 in the case, ah, but that was all handed over to the state.

10 THE COURT: Okay.

11 THE DEFENDANT: Ah, I also want to touch on my
12 cousins, because that's a big thing and to -- today, hearing it
13 is absolutely terrible. I've tried my hardest to reincorporate
14 my family, because my family is a very close family.

15 I've tried very hard to try to reincor --
16 reincorporate myself into my family. It's very difficult on
17 everyone, especially, in trying to support me and also keep the
18 family together.

19 Ah, at the end of the SAAY Program, that I completed
20 on the state level, ah, whether or not it was completed to the
21 way I should have completed it, the one thing I am proud of --

22 THE COURT: Was that your probationary program --

23 THE DEFENDANT: Yes, your Honor --

24 THE COURT: -- and your therapy?

25 THE DEFENDANT: -- that --

1 THE COURT: Well, I don't, I mean, you -- you just
2 said, whether or not, it was completed to the way it should have
3 been completed, you were downloading and viewing child
4 pornography while you were undergoing the -- while you were in
5 the program, right?

6 THE DEFENDANT: Ah, it was, actually -- I don't know
7 if the details matter, but that was --

8 THE COURT: Well, they matter to me.

9 THE DEFENDANT: Okay.
10 That was after that, but while still on the probation.

11 THE COURT: Okay.

12 THE DEFENDANT: Ah, but that doesn't, again, excuse my
13 actions, because to me, that's just a calculated thing,
14 obviously, I'm not going to do something like that while
15 completing a program, ah, but I shouldn't have been doing it at
16 all.

17 But, anyway, ah, I guess what I'm trying to say is,
18 I've tried very hard, my one accomplishment, I can say out of
19 that thing is writing a letter of recognition to my cousins, I
20 wrote a letter to each of them individually as well as to their
21 parents to explain to them, that in my mindset and to let them
22 know, all of my faults, reassuring that they did nothing wrong
23 and really trying to reconnect my family. I've seen my cousins
24 after that event plenty of times, every single holiday, I've
25 seen my cousins, every matter was appropriate and to me, I try

1 my best to bring my family back together.

2 So, I just wanted to let you know, I -- I tried very
3 hard to rebuild my relationship with my cousins and rebuild
4 their trust and, especially, with their parents as well.

5 THE COURT: Okay, thank you.

6 THE DEFENDANT: Thank you, your Honor.

7 MR. PATRIZIO: Judge Pappert, if I could just say one
8 -- one thing?

9 THE COURT: Okay. And then, we'll --

10 MR. PATRIZIO: There was a search warrant in the
11 original case, not the case that the Government brought and that
12 investigator's name was Pipes and -- Trooper Pipes. And it was
13 Trooper Pipes, who was given the name of -- ah -- this fellow,
14 Max and his Internet thing.

15 And so, again, I'm -- I don't want to get into who
16 said what to whom. They didn't have it, okay. But it was given
17 in June of -- ah, what was that date?

18 THE DEFENDANT: June of '15.

19 MR. PATRIZIO: June of '15 to Trooper Pipes. And they
20 did confiscate his phone and did get a search warrant. But the
21 results of the -- the download and the forensic was never
22 disclosed or whatever, so -- but again I'm not putting blame --
23 I'm not putting blame on Detective Bellis or anybody, I'm just
24 trying to show and I -- and I have a copy of the search warrant.

25 THE COURT: Well, I -- I don't need it. Thank you. I

1 understand.

2 MR. PATRIZIO: All right, to --

3 THE COURT: Thank you.

4 MR. PATRIZIO: -- to show that he's telling me the
5 truth.

6 THE COURT: Ms. Rotella.

7 MS. ROTELLA: Well, I don't think he's telling the
8 truth, ah, I will tell you that in our conversation, since he --
9 counsel is bringing up to the Court -- in our conversations
10 prior to resolving this case, he gave the same information to
11 the Government and we actually spoke with the Pennsylvania State
12 Trooper Pipes, who denies ever getting any information from Mr.
13 Davis, so --

14 (Discussion held off the record at 4:09 p.m.)

15 MS. ROTELLA: -- I -- I think and -- and I would ask
16 the Court, I've just prepared a timeline to -- just to exhibit
17 the information that the Court already has.

18 THE COURT: May I?

19 MS. ROTELLA: Certainly.

20 THE COURT: Yes.

21 MS. ROTELLA: If I could pass it up, because --

22 (Pause at 4:10 p.m.)

23 THE COURT: Thank you, Jeff.

24 MS. ROTELLA: And the reason why I'd call your
25 attention to it, your Honor, it's because -- and I'll -- I'll

1 get more focused in terms of my argument.

2 But if the Court looks at the bottom here in -- June
3 4th of 2015 is when he established his drop-box account, which
4 he told the Delaware County detectives he did so:

5 To obtain and to store his child pornography.

6 That is right in the middle of all of his therapy, all
7 of his court supervision and in the middle of starting his
8 juvenile sentence.

9 If the Court can see from February 3rd of 2016 to May
10 27th of 2016, that is when he uploaded all of these things to his
11 drop-box account, twenty-two thousand -- more than twenty-two
12 thousand -- images and videos of child pornography.

13 The Court will look, he was -- he did not complete
14 sex-offender treatment until March 17th, that is after -- even
15 though he stood here to your face -- and told you, that he did
16 not start doing this before he completed his sex-offender
17 program, yes, he did.

18 And how do we know that? Because the forensics show
19 us, we have the images, we have his computer, we have his cell
20 phone, so we know that that is not true, he did it while he was
21 still in the program, despite what he -- even today -- wishes
22 for the Court to believe.

23 He stands before this Court, telling you -- and I'll
24 get into the Max thing in a minute -- but even today when you
25 asked him about it, he -- he never gave anybody, the Max Marsh

1 name -- 105 -- until this moment in time, when he stands before
2 you asking for a mitigated sentence that's something -- a world
3 away -- from his guidelines call for in this case.

4 He had two -- two defense experts -- who evaluated
5 him, Dr. Haworth talked to him for over a year, he never once
6 said that, gave any of that information to him, ever, it's only
7 now poof, Max exists, it's -- it's ridiculous quite frankly.

8 And -- and when he's talking to you now about it, he's
9 trying to say, he doesn't blame his former -- he was blaming his
10 former crime on Max -- but not his current one.

11 In any event, I'm -- I'm not going to belabor all the
12 facts in this case, this Court is well acquainted with -- with
13 all of the nuances and all of the criminal offenses, crimes that
14 he committed over years and years involving himself, again in
15 child exploitation offenses. But I -- and I've well laid out
16 all of that in the Government's memorandum.

17 But I -- I would ask the Court to consider this:

18 In terms of the -- and -- and before I start with that
19 -- I do not come before every court and ask for the top end of
20 the guidelines. Last week, in fact, before Judge Diamond -- not
21 remarking on his reputation -- I could have gotten a sentence, I
22 believe, that was much higher before Judge Diamond, I actually
23 recommended to the court that he'd vary downward from the
24 guideline range in that case on the same charges that the
25 defendant was facing -- that Mr. Davis faces here today --

1 because in that case, I thought that that was appropriate. In
2 Mr. Davis' case absolutely not.

3 When -- and it's not a -- a personal thing here, I
4 work for the Government and so, I am in -- I feel like -- the
5 unique position to see how all of these cases are resolved in
6 this district. And that being the case, I am seeking before
7 this Court a sentence that is at the top of Mr. Davis'
8 guideline.

9 Quite frankly, I toyed with asking for the statutory
10 maximum in this case, but chose to ask this Court for -- finally
11 resolving it -- I think that a sentence within his guideline
12 range, actually, is appropriate, albeit at the very top of his
13 guideline range.

14 And -- and here is why, the driving factor, all -- all
15 of the other justification that I've put in terms of the nature
16 of his offenses and who it is that was targeted and prepubescent
17 children, again, mostly all being sexually abused in the exact
18 same way that he committed his former crimes with the two kids,
19 that were related to him. The -- the driving factor here, I
20 think, is -- is the history and the characteristics of -- of
21 this defendant.

22 And I don't know how this Court -- and I know the
23 Court won't -- but I -- I don't know how you cannot look at it,
24 his prior offenses in this light. And -- and that being how
25 they affect this factor, because this defendant had more than

1 any other defendant that comes before the Court, he had a
2 supportive family, he had intensive therapeutic interventions.
3 He -- he had individual therapy from two different sources, he
4 had a group therapy. The individual and the group therapy were
5 both centered around sex-offender treatment, you can't get any
6 more specific.

7 He had a juvenile probation officer assigned to him.
8 He had court supervision that he was under and he was given the
9 benefit of a probationary sentence on quite frankly, horrific --
10 horrific child-sex offenses, I don't know how that's what he was
11 sentenced to in this case -- in that case. He had all of those
12 things in place.

13 He had a relationship before he ever started
14 committing these offenses, he had a relationship, inexplicably,
15 the person is still standing here today, even though Mr. Davis
16 repeatedly lied to him and committed these crimes behind his
17 back, including on the day of the search warrant, when Mr.
18 Justino said, he didn't know why he was arrested. Mr. Davis
19 asked to speak to the detectives outside of Mr. Justino's
20 presence, because he didn't want him to know what he was doing,
21 so he could continue to lie to him. And that, I would suggest,
22 is exactly what he's doing to the Court here today.

23 The whole notion of Max, the whole notion of this
24 person being in existence, it's ridiculous. Quite frankly
25 between the defense expert reports that were submitted to this

1 Court and you -- you have much in the way of information as to
2 how this particular defendant thinks. You have as exhibits, the
3 -- the evaluations that were done back in time, when he
4 committed those juvenile offenses from Dr. Surbeck and from Dr.
5 -- I forget her name, it begins Timmy -- Timmony (ph) her name
6 is. All of that information is, this defendant repeating to
7 these professionals, what drove him to do these crimes.

8 And I -- I would submit that from the beginning it's
9 been this, I call it, the not-his-fault defense. It's Max, who
10 introduced the topic of having sex with the younger boys and the
11 defendant -- and this is all in Dr. Haworth's report -- the
12 defendant was uncomfortable with it, but he tolerated it,
13 because he wanted the attention of Max.

14 He -- he blames, the children, he says, the -- the
15 children -- a younger boy walked in on him when he was
16 masturbating and -- and he wanted to educate the boys and -- and
17 he wanted to teach them how it is done and he thought that he
18 was, actually, helping him, that is in one of the evaluations,
19 he -- he thought he was, actually, helping the boys to learn.

20 You have Dr. Surbeck and you have Dr. Rodriguez both
21 saying, that thought pattern, where you think you're -- you're
22 actually doing a favor for the child's sex -- the child victim
23 -- it is very much aligned with every other adult sex offender,
24 because that is exactly what he is. He's an adult sex offender,
25 he's twenty-four years old here today and he's -- he's not --

1 he's not an adolescent. He is a young man and he -- he has
2 earned the -- the sentence that is about to be imposed upon him.

3 He claims that Max is the one, who sent him the child
4 pornography and Max is the one that introduced him to the KIK
5 group, where he could correspond with other child-sex offenders.
6 Max's conversations influenced him to exploit the situation --
7 the situation -- with a nine year old.

8 And I don't know -- I don't know if it's -- it's --
9 the Court has seen here or if it's been significant for the
10 Court, the -- the defense seems to have a great difficulty in
11 terms of actually, articulating what it is that he did to those
12 boys.

13 I -- I would even say, you -- you would feel more
14 comfortable with, perhaps, giving any kind of mitigation in this
15 case, if he had simply come before the Court and, at least,
16 demonstrated some kind understanding as to the harm that he
17 caused on these children. If he is willing to this to his two
18 cousins, who loved him, who respected him and who were part of
19 his family, he was entrusted with their care, he babysat them on
20 a regular basis, if he's willing to cross the line with those
21 two children, no child is ever safe in this community.

22 And -- and what -- I don't know how he could have an
23 understanding about anally raping a six-year-old or digitally
24 anally -- digitally penetrating a nine-year-old or forcing both
25 children to have -- perform oral sex on him and him doing the

1 same to them or masturbating them.

2 But every time it's talked about, it's talked -- even
3 the words he used today, this behavior, that's what -- that's
4 what Mr. Davis said, this behavior, he didn't articulate what he
5 did, because of course, it's -- it's too vulgar and it's too --
6 ah, depraved. But it certainly would go a long way in terms of
7 being able to show that he does recognize what he did or -- or
8 to have some sort of his defense, one expert talked about him
9 having remorse, but I -- I don't see any of that today.

10 He's not -- he's not -- he's talking about apologizing
11 to the -- to the -- to the victims, who were depicted in his
12 images here, but there is no sense of understanding of the
13 extreme harm for the kids that were involved in this offense or
14 his previous one.

15 And that's what I was talking about earlier, the --
16 the circumstances of the -- what's depicted on these videos.
17 They are horrific, they are really difficult to watch, it is,
18 horrific, especially, the -- the horrible abuse that is being
19 inflicted on those really young children.

20 And -- and especially, the one video, each -- each of
21 the occasions where he was transferring this child pornography
22 to his drop-box account and distributing it out, there is one
23 day, where there was only one video and that's what he did while
24 he was at West Chester University, he chose that video,
25 specifically, and put it into a folder that he -- that was

1 marked, Oh, My God, OMG in capital letters. That video depicts
2 an infant, who was just weeks old, it appears, who is being
3 horrifically sexually abused where -- and I did detail it in --
4 in the Government's memorandum.

5 There is sound on the video, the -- the adult sex
6 offender is saying, that this is my grandson and I'm gonna make
7 him -- he's gonna -- I'm gonna make him, ah -- you're gonna see
8 what happens when I -- when I abuse him. And he inserts his
9 penis to such an extent on that small baby, that the baby is
10 actually, choking and can't breathe, the face is turning red,
11 the baby is screaming when he removes his penis. And then, he
12 continues to assault the child.

13 That's the one video that he accessed from school and
14 then he chose to save and to place in a special place as part of
15 his drop-box account.

16 I -- I don't know how any human being could ever take
17 sexual pleasure in -- in something like that -- I don't -- and I
18 don't how you can fix somebody like that, I don't think you can.

19 So, in terms of his prior abuse that this Court should
20 consider in terms of what risk he faces and -- and how -- how he
21 will perform, you know, as the Court knows, it was multiple
22 boys, they were so young, they're both prepubescent, multiple
23 occasions while they were babysitting, it's -- it's well laid
24 out in the Government's memorandum.

25 But the fact that he could still now today bring

1 himself to say, that the most basic of what is obvious to
2 everybody else in the room, which is that, yes, he is sexually
3 attracted to children. Yes, he did this of his own volition, he
4 did it willingly and he did it to satisfy his own sexual urges.

5 That -- that, too, would probably go a long way in
6 saying, all right, well, maybe, you recognize what it is that
7 you've done in small ways and there is some hope for you. But
8 he can't do that, not even today, not even knowing what he's
9 facing.

10 The -- the collection here, significantly it is
11 overwhelmingly, prepubescent boys, all around the same age as
12 the kids that he sexually abused that were in his family.

13 The -- the ridiculousness of this -- of this Max thing
14 that I -- that I told you about, again, blaming him. The fact
15 that he could say that he was -- ah -- engaged with him and that
16 an online person can convince you to go, sexually abuse your own
17 six and nine year old cousins, is -- it's quite frankly, just
18 ridiculous, the whole thing is ridiculous.

19 He just didn't want to admit to his family that he was
20 the one that did this. And he had to in some way, shift the
21 blame somewhere else.

22 But then to say that after this whole thing happened
23 and he was outed and he's on probation, that he then reconnects
24 with this Max -- and by the way, we're calling him, Max, but
25 really, he identified him as Mike at first, right around the

1 time when he was first arrested and, supposedly, still engaging
2 with him. Of course, there's no forensic evidence on any device
3 ever of Mike or Matt or Max, there is nothing anywhere.

4 And so, it's Mike and then, of course, it's Matt and
5 that's in 2017. And then, because he forgot what he told,
6 because it was not the truth in 2020 and in late 2019, when he's
7 talking to his defense experts, he gives yet another name, this
8 third name. Of course, nobody confronts him or even asks him,
9 why would you give a different name, if you were so involved in
10 this person -- with this person?

11 And quiet frankly, that's because they wanted to
12 present a story to this Court that just is not accurate about
13 what happened.

14 But to say that, you know, this mystery person is now
15 responsible for the second child-exploitation crime, I mean,
16 it's almost like, when you would get caught -- I don't know --
17 smoking when you were a kid, my friend asked me to hold my
18 cigarettes, I mean, that's -- that's what he said, this person
19 asked me to hold his online child pornography, which just is --
20 it just makes no sense, whatsoever.

21 And so, I've outlined for the Court, he's said
22 different things at different times, you know, saying he was
23 threatened, saying he was coerced, saying he was induced, you
24 know, again, of course, not providing any information,
25 whatsoever. He -- he just does not accept true responsibility

1 for his crimes.

2 And although the defense experts wanted to opine to
3 you, that he has, I -- I'd ask this Court, you know, take a -- I
4 know, you've read the reports, but there's lines in say, Dr.
5 Haworth's report, the first one:

6 The defendant takes full responsibility for
7 submitting to Max.

8 And he recognizes that he allowed himself to be
9 drawn in by Max.

10 I mean, that's not full responsibility, it's not.

11 And in Dr. Zakireh's report on Page 5:

12 The defendant traces his pursuit of child pornography
13 as well as his sexual offending against his male cousins as
14 a direct result of the influence, persistent persuasion,
15 enticement or otherwise in the service of pleasing or
16 maintaining his relationship with Max.

17 I mean, that part of it is -- is all over -- all over
18 here, because -- and I'd ask you, even to today, Ryan Davis has
19 had years to think about what he wants to write to this Court
20 and what he wants to say to this Court. What does he say on
21 Page 2? He talks about, he wants to accept responsibility for
22 his mistakes. There is nothing about anything that he has done
23 in any of his criminal escapades. Back in juvenile court, here
24 today as an adult, all the years that he committed it, they were
25 conscious choices, there was -- in no way were these mistakes.

1 And again, that goes towards his recognition that he
2 does accept responsibility and his recognition of what he's done
3 here.

4 And I don't see any of that in this letter here, there
5 is nothing -- nothing -- in here that talks about what he did,
6 the harm he caused, nothing whatsoever, it -- it talks about him
7 and that's -- that's what he's displayed this whole time.

8 I don't know what else could be in place for a
9 defendant, the family support that I've talked about, the
10 therapeutic support that I've talked about, the fact that he
11 committed these crimes while under court supervision, after
12 having already been outed, so that everybody around him, knew
13 what had done and was participating in trying to help him to get
14 past what he had done and -- and rehabilitate himself and do
15 something different with his life, all of those things, instead,
16 he chose to lie to everybody around him, everyone. And involved
17 himself, again in child exploitation offenses. And that is
18 exactly what he is going to do whenever he is released.

19 So, the purposes of punishment, I understand that the
20 Court had to consider his risk of recidivism or -- or you expect
21 him to act once he is finally released from prison. But I -- I
22 would ask, punishment and also protection of the public are
23 really the two driving factors here for this sentence.

24 And -- and I think that he has demonstrated history
25 will repeat itself and he's earned himself here, a sentence at

1 the top of his guidelines and I would ask that the Court impose
2 that.

3 THE COURT: I appreciate it --

4 MR. PATRIZIO: Judge --

5 THE COURT: -- thank you, Ms. Rotella.

6 MS. ROTELLA: Thank you.

7 MR. PATRIZIO: -- Judge, I wanted to object. I never
8 believed that today's sentencing was going to be about whether
9 Max was a real person and --

10 THE COURT: Well, let me stop you right there and from
11 further embarrassing yourself, okay?

12 MR. PATRIZIO: Myself, Judge?

13 THE COURT: Yes, yourself and your client by
14 extension.

15 Because what that tells me is, you never read a word
16 of what you paid your experts to write.

17 MR. PATRIZIO: I've read every word, Judge.

18 THE COURT: Max is an essential component to their
19 reports and my assessment of whether your client has accepted
20 responsibility or is capable of rehabilitation and may
21 recidivate and --

22 MR. PATRIZIO: Then, I ask for an adjournment,
23 Judge --

24 THE COURT: -- for you to say, given the --

25 MR. PATRIZIO: -- Judge --

1 THE COURT: -- Government's position all along in this
2 case, which is -- then, you never read a word of what Ms.
3 Rotella filed with me, either --

4 MR. PATRIZIO: That's not true, Judge.

5 THE COURT: -- it's very clear that they think it's
6 all made up.

7 MR. PATRIZIO: And --

8 THE COURT: And I'm now after listening to six hours
9 of this, I agree with them.

10 So, for you to say, you never knew Max was going to
11 come up --

12 MR. PATRIZIO: No, I didn't know it was gonna be come
13 -- coming up in this fashion.

14 THE COURT: Well, of course, it was --

15 MR. PATRIZIO: Then, Judge, I'd ask for --

16 THE COURT: -- and your client got up and made it a
17 part of the case.

18 MR. PATRIZIO: -- Judge, I'd ask for an opportunity to
19 continue this matter to --

20 THE COURT: Are you kidding me?

21 MR. PATRIZIO: No, I'm not kidding, Judge, because --
22 because, Judge, I have -- I have an exhibit now, okay.

23 THE COURT: I -- I don't care what you have, this has
24 been going on since -- the anniversary is today or tomorrow, May
25 of 2014 and for the first time in seven years after the

1 investigations are over, after he could have helped himself,
2 after he sat with his experts, but before I pronounce sentence,
3 we --

4 MR. PATRIZIO: Judge --

5 THE COURT: -- have this revelation --

6 MR. PATRIZIO: -- Judge --

7 THE COURT: -- are you out of your mind?

8 MR. PATRIZIO: I'm not out of my mind, Judge.

9 THE COURT: Then, sit down --

10 MR. PATRIZIO: Judge, I have --

11 THE COURT: -- sit down --

12 MR. PATRIZIO: Are you --

13 THE COURT: -- now.

14 MR. PATRIZIO: -- you're not allowing me to speak,

15 sir?

16 THE COURT: No, I am not, sir.

17 You have had since nine o'clock this morning to speak,

18 are you kidding me?

19 MR. PATRIZIO: My client asked me to object, Judge.

20 THE COURT: I don't care what your client asked you to
21 do, it's patently ridiculous.

22 MR. PATRIZIO: I have a --

23 THE COURT: I haven't become this irritated with a
24 lawyer in seven years on the bench with, maybe, one exception.

25 And to those of you in the background, I apologize.

1 Okay?

2 MR. PATRIZIO: Judge, could I --

3 THE COURT: But you to say, what you just said after
4 seven years of investigations and therapies, look what you're
5 doing to his mother. I can see her, you can't.

6 Now, we're going to adjourn. I am going to collect my
7 thoughts. I am going to come back in a measured and careful way
8 and I am going to announce my sentence and I am going to
9 articulate the reasons for it and you are going to listen.

10 We're adjourned for -- until 4:45, it is now, 4:30,
11 thank you.

12 DEPUTY CLERK: All rise.

13 (Recess at 4:30 p.m.)

14 (Resumed in open court at 4:48 p.m.)

15 THE COURT: I have a lot of notes and a lot of
16 materials, I will be flipping back and forth during my
17 discussion of the appropriate sentence in this case.

18 I have -- I'd like to start by talking to Ryan's
19 mother and his family.

20 And no one can say, they know how you feel, I am not
21 going to try. I know it's been seven years now of dealing with,
22 you know, the shock and everything that comes with it, the
23 criminal justice issues and I am not going to pretend how many
24 of those nights have gone, but I know you've suffered.

25 And I am very sorry for what's happened in the last

1 seven years. And I -- I was not the judge before whom Ryan pled
2 guilty, so I never had a chance to see anyone before today, but
3 I am just very sorry for everything that you have gone through,
4 for everything you have had to hear today and I know that,
5 maybe, you are learning now that even everything you heard today
6 was the -- the very tip of the iceberg.

7 There were descriptions of other images and videos
8 that Ms. Rotella did not get into, but that I read. And I
9 didn't need to see the videos to appreciate the depravity of
10 them, but I also didn't want you to.

11 I apologize for everything that's brought us here
12 today and you have my sympathies and I apologize -- apologize in
13 advance for what you're about to hear from me, because it's not
14 going to be very easy. But I can assure you that as much as you
15 wish you weren't here, I wish I wasn't here, either, I can
16 assure you of that.

17 This is the most difficult thing that judges have to
18 do and these cases present some of the most difficult challenges
19 for us.

20 And as in all my cases -- and I'm not special, my
21 colleagues do the same thing -- I read everything I could read
22 multiple times, because when you are dealing with offenses like
23 this and guideline ranges like this, you just worry that you're
24 not going to get it right. And in many ways, there is no right,
25 it's all wrong.

1 I have spent this entire week, reading about this case
2 to the exclusion of my other cases, all day, every day, so that
3 I could say, that I did my best to give an appropriate sentence
4 in a case like this.

5 And when child pornography is involved and federal law
6 is violated, as you've heard in various forms today, the
7 advisory sentencing guidelines are often very, very high. And
8 as judges, we all struggle with that and we struggle with
9 everything I have been struggling with since Monday morning and
10 will struggle with after I leave here today to be very honest
11 with you.

12 Is this the right thing, is there a better way? Are
13 these appropriate time periods? And you look for reasons to be
14 able to explain why a guideline sentence is not appropriate and
15 those reasons come in many different forms.

16 After three days of reading and roughly eight hours of
17 listening, there are no reasons to depart downward or vary
18 downward from the guidelines in this case.

19 I am going to sentence the defendant to 240 months
20 incarceration, a lifetime of supervised release, a \$200.00
21 special assessment.

22 And I will also order the defendant to pay \$15,000.00
23 in restitution pursuant to 18 United States Code, Section 2259
24 to the victims of the defendant's crimes, who have petitioned
25 for restitution.

1 I find the defendant has no ability to pay a fine. He
2 is unlikely to be able to pay a fine in the future and to the
3 extent that he is able, I would prefer that resources are
4 directed to restitution for the victims.

5 And let me summarize the reasons for my sentence as I
6 am required to do and for his family, the law requires me to
7 articulate within the confines of certain legal requirements,
8 why this is an appropriate sentence.

9 And we start with a factor known as the nature and
10 circumstances of the offense. And I will tell you, that the
11 guidelines in these cases are so very high, sometimes, and in
12 most of the cases, at least, that I have presided over, there
13 has never been any physical contact with children.

14 These are cases where people are downloading and
15 reviewing these materials and we focus on what Congress and the
16 Sentencing Commission has told us, is the danger brought to
17 society by people, who just download them, who never put their
18 hands on a child and this case, it's different and we'll talk
19 about that for the right reasons.

20 But the United States Supreme Court has recognized
21 that child pornography harms and debases the most defenseless of
22 our citizens.

23 And what gets lost today in the expert testimony about
24 the relevance of the prior convictions and whether his prior
25 sexual abuse of his young cousins makes him more likely to

1 recidivate, less likely to rehabilitate, what gets lost in all
2 of this, is that this sentence is about those children, who were
3 exploited when they were filmed and the constant harm and re-
4 exploitation that they suffered.

5 And the letters from the victims, who will receive the
6 restitution award in this case, talking about how the rest of my
7 life, all I do is worry about, what if someone sees that video,
8 when I'd meet a girl, is she going to see it? When I meet her
9 parents, when I interview for a job and they do a background
10 check on me, will someone who walks past me, recognize me from a
11 pornographic video that an adult made while they sexually
12 exploited me and abused me?

13 Congress has found that child pornography is a form of
14 sexual abuse, which can result in physical or psychological harm
15 or both to the children, who are filmed.

16 Our Court of Appeals has acknowledged these findings,
17 saying, that Congress found little distinction in the harm
18 caused by a pedophile, be he a distributor or a mere consumer in
19 child pornography, because the mere existence of and traffic in
20 child pornographic images creates the potential for many types
21 of harm in the community and presents a clear and present danger
22 to all children.

23 Child pornography inflames the desires of pedophiles
24 who prey on children, thereby increasing the creation and
25 distribution of child pornography and the sexual abuse and

1 exploitation of actual children, who are victimized as a result
2 of the existence and use of these materials.

3 Congress considers the transportation of child
4 pornography a particularly egregious crime and has set high
5 penalties for it based on its finding that exchanging images
6 contributes to the growth of child pornography and harms
7 increasing numbers of children.

8 This case today, isn't about his cousins, though
9 they're relevant for the reasons you've heard the experts talk
10 about. This case today is about those defenseless children, who
11 have been subject to some of the most horrific abuse you can
12 ever imagine. Ms. Rotella gave you one example, she spared you
13 of many others.

14 This case involved more than 22,000 images and videos
15 depicting horrific abuse of children, prepubescent children,
16 toddlers, infants. They depicted sadism, masochism, rape,
17 toddlers, infants screaming in pain, it doesn't get worse than
18 this, it just doesn't.

19 The defendant collected child pornography for almost
20 three years after already having been convicted of child-sex
21 offenses, while pending trial, while on probation, while
22 undergoing therapy and I'll talk more about this.

23 Ms. Rotella is right, because that's a predictor for
24 us, that tells us whether this person is amendable or capable of
25 the type of rehabilitation that we're going to need as a society

1 when he's out.

2 (Pause at 5:01 p.m.)

3 THE COURT: Over six years ago, Dr. Catherine Surbeck
4 (ph) perform a psycho/sexual evaluation on Mr. Davis, it's part
5 of the records in this case, it's part of what I read. Dr.
6 Surbeck among other things, recommended offense specific
7 treatment. She focused on the need to clarify the discrepancies
8 between Mr. Davis' version of events and his young cousins'.
9 She noted that:

10 He needs to honestly address his intentions and
11 motivations. He needs to develop full accountability
12 for his actions. Honestly, acknowledge the reasons for
13 his behavior.

14 That was on January 13, 2015, he still hasn't done any
15 of that.

16 This is my seventh year doing this, I don't know more
17 than I know, but what I do know is when a defendant is sincerely
18 remorseful. I do know when a defendant really accepts
19 responsibility. I do know when a defendant is willing to
20 acknowledge what he's done and to try to get past it. And Mr.
21 Davis has none of those qualities, his allocution to me
22 confirmed that.

23 And we'll get into the relevance of Max, it's less
24 relevant to me for different reasons than I think it was to many
25 of the lawyers in the courtroom.

1 I didn't see a thing in what I read for three days or
2 heard for eight hours, that credibly showed me or convinced me
3 that Mr. Davis has done anything that Dr. Surbeck wanted him to
4 do in January of 2015.

5 In her report, Dr. Rodriguez, whose evaluation and
6 diagnoses, I found credible. I cannot say the same thing for
7 the defense experts, their findings were not credible and on key
8 areas of their testimony, their conclusions are simply not
9 credible.

10 Dr. Rodriguez's assessment is consistent with all of
11 the evidence and the records and the materials I've read in this
12 case. I appreciate and respect that when defendants retain
13 expert witnesses or the parties in civil cases retain expert
14 witnesses, those witnesses are retained to offer an opinion
15 that, hopefully, supports the defense of the case, but they have
16 to be credible.

17 And with all due respect to both doctors for reasons,
18 I'll discuss, there was an extraordinary amount of willful
19 blindness applied to the facts of this case by the experts and
20 that willful blindness colored their opinions and hurt their
21 credibility. I did not find that to be the case with Dr.
22 Rodriguez.

23 Dr. Rodriguez in her report -- and I'll augment it
24 with my thoughts on her testimony -- said among other things:

25 She fears that the nature of his problems, suggest

1 treatment would be challenging.

2 There is no doubt to me based on everything I've seen,
3 read and heard, that treating him will be challenging.

4 One of the more material aspects of this case and
5 about my decision was also a subject of the experts' debate.
6 Dr. Rodriguez pointed out, that among other things:

7 Mr. Davis minimized his deviant sexual desires
8 and did not acknowledge at all, any sexual interest in
9 children.

10 Seven years later, countless hours of psychotherapy
11 later, four if not five psychosexual evaluations later, he
12 denies to this day, having a sexual interest in children. You
13 don't have to be an expert to know, that's completely
14 ridiculous, I guess, it would help but you don't have to be.

15 How do you explain his conduct with his cousins? How
16 do you explain the materials he sexually gratified himself while
17 watching and looking at? Of course, he has a sexual interest in
18 children, that's why we're here.

19 But what that tells me is, if after all this time --
20 and Ms. Rotella, you know made a point and it's something I
21 think about a lot when defendants finally have the opportunity
22 to stand before me, many have been incarcerated for a while pre-
23 sentencing or have been under investigation for years and this
24 is their chance -- this is their chance to tell me, why you'd
25 deserve a break. Why you don't fit the type of person that

1 Congress is afraid -- so afraid of -- with these laws.

2 And there are days like today, when all I can say is,
3 that's all you've got, really?

4 And when I have someone in front of me, who will not
5 acknowledge that he has a sexual interest in children, what am I
6 supposed to think about his capability for rehabilitation and
7 whether or not, he will do this again? I am sure, the experts
8 would say, that's the first thing you'd need, you need to admit
9 why you did what you did.

10 As a Probation officer with whom I work on these cases
11 says, you need to have your Come to Jesus moment with yourself
12 here, that's where it starts and seven years later, it hasn't
13 even started yet, think about that, it hasn't even started. The
14 process of rehabilitation -- of healing -- it hasn't even
15 started yet.

16 And he has had more individual therapy than anyone
17 I've ever had in front of me on a case like this, seven years
18 worth. Four or five different evaluations.

19 So, when I look to the facts of the case and say, gee,
20 what -- what can I look to to justify a lesser punishment here?
21 What confidence can I have that this is a person, who won't be a
22 danger to society when we release him? I have nothing -- I have
23 nothing.

24 Ms. Donnelly's colleague in the Probation office said
25 to me the other day, you know, your Honor, when we supervise

1 these people, the worst fears we have is, are they going to turn
2 watching pornography into putting their hands on a child? And
3 that's the worst fear I have, it's the worst fear we should all
4 have. He's already done that and after seven years, he has not
5 been honest with anybody about why he did it, not his family,
6 not Mr. Justino, who didn't even know about this, not his
7 lawyers and surely as heck not his experts. And not me and I'm
8 relevant to this determination it would seem.

9 Dr. Rodriguez believes and wrote that Mr. Davis:

10 Does not think he needs help to control his sexual
11 impulses.

12 She so testified today as well, I believe.

13 (Long pause at 5:12 p.m.)

14 THE COURT: You know, another thing that's very
15 important to me and that further prevented me from ignoring the
16 guidelines in this case, is the timeline of what happened here.
17 And when I think about whether this defendant can be
18 rehabilitated, can be put back in society without being
19 dangerous, I've had a seven-year test period to look at it.

20 And the experts tell us all those factors that should
21 indicate that he will not commit these offenses again and they
22 talk about, he's in a stable relationship, a supporting family,
23 above-average intelligence, a good student, but he was engaging
24 in all of this conduct while he had all of that, with all of
25 that individual therapy layered onto it, while under the threat

1 of a jail sentence in state court.

2 Because before that plea bargain and that probationary
3 sentence, he didn't know what was going to happen. While under
4 the court's supervision, he's doing all of this, while he is in
5 therapy, he's doing all of this, while he's in a committed
6 relationship, he's doing all of this, he's accessing these
7 videos at Mr. Justino's mother's home. I read about how helpful
8 he was around her home, that's not the only thing he was doing
9 when he was at your home. I'm sorry to point this out, but it's
10 very relevant to how I have to look at the case, I know it
11 hurts, I'm sorry.

12 (Pause at 5:16 p.m.)

13 THE COURT: Let me come back to the experts under
14 another factor, but let's turn now to the defendant's history
15 and characteristics, which is the second thing that I'd need to
16 consider.

17 I've read everything very carefully and repeatedly. I
18 know that his mother and father divorced when he was one and his
19 father showed little interest in him and I'd credit how that
20 affects a young boy growing up and that's a tough card, he got
21 dealt and there's no way around that.

22 He was raised primarily by his mother in what Mr.
23 Davis termed, an upper-class lifestyle. There were no domestic
24 issues, neglect or any kind of physical or sexual abuse in his
25 household.

1 He struggled with his sexual orientation, admittedly
2 and -- and bullied in school, that's not easy coping with as a
3 young man. I fully appreciate and respect that.

4 Despite his struggles, he was a very good student in
5 high school and in college. There is no documented history of
6 drug or alcohol abuse and I find that there probably wasn't any
7 and whatever someone said at the FDC in Philadelphia it doesn't
8 carry any weight with me, I don't -- I didn't see anything that
9 indicated that he had an issue with drugs or alcohol.

10 He had a very good employment history. No history of
11 mental-health treatment until the age of seventeen when charged
12 in the underlying state case.

13 We, of course, in considering his history and
14 characteristics have to consider his prior criminal conduct and
15 the prior adjudication for sexually abusing his two young
16 cousins, age six and nine while babysitting them.

17 What a horrible violation and betrayal of the trust
18 those boys' parents put in him. He was entrusted with their
19 care, they loved him, they looked up to him, he abused them over
20 multiple days. I won't repeat what he did to them physically,
21 no one needs to hear that again.

22 When caught, he lied, he tried to blame the children
23 for what happened -- they're six and they're nine -- that it was
24 their fault.

25 And that gets to blaming others and that's where Max

1 becomes relevant, because again, I have to look at everything
2 that's in front of me and decide, has this person truly accepted
3 responsibility? Is this person truly remorseful? Can this
4 person take the first step toward being changed or being healed
5 by admitting what he did and why he did it?

6 And we'll discuss Max in the context of the lack of
7 credibility, in the expert reports as well. But you can make up
8 your own minds as to whether this person really existed. I kind
9 of doubt it, it's not really material to my assessment of the
10 relevance of this person.

11 I do believe everything that Mr. Davis told during his
12 allocution, is not credible, I do not find it to be credible.
13 There is nothing in the records -- voluminous records --
14 evidence that the Government collected in this case, which could
15 corroborate that in any way. The doctor certainly didn't
16 attempt to. I just don't believe it.

17 And if I find that that's not credible, I find that in
18 his opportunity to tell me, why the guidelines aren't
19 appropriate, he stood right there under oath and lied to me
20 seven years later. I -- I don't know how you'd take from that
21 anything other than, I have nothing to believe that the
22 guidelines shouldn't apply, nothing and I looked really hard, I
23 really did, all week.

24 He went to great lengths to conceal his knowingly
25 illegal conduct and destroyed evidence of his crimes. And let

1 me talk about -- we'll save that for later.

2 (Pause at 5:22 p.m.)

3 THE COURT: I am required to consider how the sentence
4 and the need for the sentence imposed will reflect the
5 seriousness of the offense, promote respect for the law and
6 provide just punishment for the offense.

7 As serious a sentence as this is, there is an argument
8 to be made that it is not serious enough given the conduct. But
9 my job isn't to outdo the seriousness of the conduct, my job is
10 to impose a sentence that is sufficient, but not greater than
11 necessary to comply with the purposes set forth in those factors
12 that I'm going over with now.

13 To promote respect for the law, I hope it does because
14 Mr. Davis has none -- none. And we know he has none, because he
15 was breaking the law while under probation from breaking the law
16 the last time.

17 And his denial and his lies and his concealments and
18 his excuses have continued right through when he spoke to me.
19 Sometimes, I don't expect much and I feel like I don't demand
20 enough, but gee whiz, I'd appreciate not being lied to during an
21 allocution, that would have been a nice start.

22 These were heinous crimes and he still refuses to come
23 to terms with it. As I mentioned in discussing respect for the
24 law, he schemed long, hard and often to avoid detection and
25 cover up his crimes. He committed the crimes while under court

1 supervision.

2 As a juvenile, he received -- Ms. Rotella is correct
3 for the nature of the offenses -- an extraordinarily lenient
4 sentence for what he did. And again, today isn't to make up for
5 that, that's that, we're here on a different issue.

6 But if those circumstances didn't cause him to even
7 pause -- and that's really what we have here, right -- he just
8 ran through the stop sign, he never even slowed down. And how
9 can I assess what respect for the law, he has in any context
10 other than that?

11 That kind of feeds in to the need to afford adequate
12 deterrence to criminal conduct. And when we talk about
13 deterrence to criminal conduct, there are two types of such
14 deterrence, we refer to them as general and specific.

15 And general, loosely defined means, you want someone
16 to see what can happen to them, if they commit crimes like this,
17 so that they don't do it. We want to deter people, generally
18 from going down this road, particularly, in federal court.

19 Specific deterrence refers to the specific person, how
20 do we deter this person from doing this again? And a guideline
21 sentence is required here, again, because of the nature of the
22 crimes, but more relevant to me, the fact that -- as I've
23 mentioned -- he just shifted gears the last time he was caught.
24 He went from the hands-on abuse right in to the child porn, but
25 he wasn't deterred at all, not at all. And if you'd look at the

1 timeline that Ms. Rotella put together, there is no other
2 conclusion that I can reach.

3 This is the Court's best effort based on all of the
4 facts of this case and the applicable law and the advice of the
5 guidelines to try to convince Mr. Davis that he cannot do this
6 again when he has the chance to rejoin society, the sentence
7 alone won't do it, the treatment will do it, his commitment will
8 do it, starting with his honesty to himself and to all of you,
9 that's where it has to start.

10 I am required to consider a factor that I have to
11 consider in every case, but it is particularly relevant, I
12 think, in these cases and particularly in this case.

13 And that is the need to protect the public from
14 further crimes that the defendant might commit and we all worry
15 about this and any judge who says, he or she doesn't, is not
16 being honest with you.

17 As Dr. Rodriguez pointed out in her way -- in her
18 report and her testimony -- and as I mentioned earlier, so many
19 of these cases involve just the viewing of the materials.

20 And can we protect children from being exploited again
21 by this person when they're released? But when they've
22 previously committed a contact offense -- and you heard Dr.
23 Haworth talk about it as well -- that's relevant to assessing
24 the risk to the public, the ability to rehabilitate and whether
25 that person will recidivate.

1 And when they put their -- when it's more than just
2 looking at material, that individual is at a different level now
3 and that's part of the history that the experts had to deal with
4 in this case. And I'll be critical of the defense experts in a
5 minute, but they had a tough set of facts to work with, okay.

6 We know that it's possible for Mr. Davis to turn his
7 fantasies to reality, because he's already done it. And I
8 forget, if it was Dr. Rodriguez or Dr. Hawthorne (sic), past
9 behavior is the best indicator of future behavior, it's only
10 common sense.

11 So, let's talk about Dr. Rodriguez's conclusion about
12 the risk of recidivism.

13 (Pause at 5:31 p.m.)

14 THE COURT: Dr. Rodriguez told us, that Mr. Davis
15 acknowledges stimulating himself to child pornography, yet
16 denies having any sexual interests, thoughts or fantasies
17 involving children. Medically, factually, legally or otherwise,
18 that just doesn't seem to make a lot of sense.

19 She is concerned about his resistance to change. As I
20 mentioned, her assessment was more consistent with the evidence
21 and the records and it was, thus, more credible.

22 She explained why he was diagnosed, she diagnosed him
23 with a pedophilic disorder. She told us about how he feels a
24 constant pull to return to child porn while in his relationship
25 with Mr. Justino. She calls him a moderate to high-risk

1 classification. It was Dr. Rodriguez who said:

2 The risk is even higher when that person has committed
3 conduct while on supervision.

4 Dr. Rodriguez defined for us, pedophila and explained
5 why Mr. Davis fits all the criteria for it.

6 Doctors Zakireh and Hawthorne (sic) in my opinion
7 strained awfully hard to avoid such a diagnosis, when all of the
8 materials in front of them led to one. And when you hear Dr.
9 Rodriguez explain the diagnosis and match it up with everything
10 that she reviewed and all of her discussions with Mr. Davis, it
11 becomes clear that that's what we're dealing with.

12 Dr. Rodriguez feels that Mr. Davis is an above-average
13 risk to recidivate for at least, eleven reasons:

14 His age, his history, the fact that his victims were
15 males, her evaluation, the fact that they were diverse sexual
16 offenses, that he engaged in these offenses while undergoing
17 treatment and undergoing -- and under court supervision and in a
18 stable relationship.

19 I don't know if Dr. Rodriguez drew special attention
20 to Point 10, but I did, he minimized and rationalized his
21 conduct. And I think that's where now, Max becomes a little
22 more relevant.

23 And why, I believe for a number of reasons, that
24 Doctors Zakireh and Haw -- Haworth -- Haworth -- I mispronounced
25 his name, I apologize -- why their testimony and their opinions

1 just aren't credible.

2 Now, what became clear to me after Dr. Zakireh's
3 testimony, was that the defense realized, gee, this Max thing is
4 kind of an issue, because it really did undercut the credibility
5 of Dr. Zakireh's testimony.

6 So, it appeared to me that Dr. Haworth had an
7 additional mission during his direct examination and that was to
8 mitigate whatever damage Ms. Rotella was able to accomplish with
9 Dr. Zakireh through Max. So, you will recall Dr. Haworth
10 getting up there as soon as he could saying:

11 Oh, he -- oh, I want to be clear now, he never
12 presented Max in a devil-made-me-do-it context.

13 Which unfortunately did nothing but hurt Dr. Haworth
14 more, because when you look at his report, of course, that's
15 what he did.

16 And let the fact that Dr. Haworth took this without
17 even checking it, without doing anything really that he could
18 have done to look under the hood to verify this, told me that
19 this was a way to get to a result that Dr. Haworth wanted to get
20 to for his client.

21 And if I'd just take Mr. Davis' word on everything, I
22 can construct my opinions accordingly. He should have and could
23 have looked further into whether or not, this was even true.

24 But frankly, that's not all that important to me, what
25 is important to me is how fundamental Max is to Dr. Haworth's

1 conclusions and his assessment of Mr. Davis.

2 Ryan reported Max talked repeatedly about having sex
3 with younger boys and normalizing it, he indicated how the boys
4 were curious and liked it. Ryan reported that, though,
5 initially, he was uncomfortable, he tolerated this discourse and
6 persisted, because he so wanted the attention and feelings of
7 being desired that Max gave him.

8 Ryan explained, Max ultimately wanted me to take
9 videos and photos of me engaging in sex acts with the two boys,
10 his cousins. Ryan was fearful that if he didn't do what Max
11 wanted, I would lose it forever. I was afraid Max would find
12 someone else to entertain with what we could discuss. He
13 tolerated -- Ryan did -- the contents to stay connected. He
14 eventually, hoped to get to something else, something more
15 personal.

16 Ryan discussed how he was attracted to Max, trusted
17 him. Ryan explained that when he disclosed that he babysat his
18 cousins, Max started to tell Ryan how he -- Max -- engaged in
19 his own -- in his own young cousins in sex. He told Ryan, his
20 cousins liked it. Max encouraged Ryan to do sexual things with
21 the boys, that he babysat.

22 Ultimately, these conversations influenced Ryan to
23 exploit the situation with Matteo, walking in on him in the
24 bathroom. Max exploited Ryan's vulnerability, immaturity,
25 feeling isolated and unloved. Ryan would do anything he could

1 do to keep his connection with Max. I was infatuated with Max,
2 I wanted to give him attention, care, I wanted to please him.

3 Ryan reported the relationship online with Max
4 persisted over a couple of years. Ryan noted that at one point,
5 Max asked him to hold some digital files for him, they were
6 files of child pornography, he reported, he complied.

7 This was in a report, a pretty lengthy and very
8 thorough report, that the hired and compensated expert witness
9 prepared, you would think, after a lot of thought and based on
10 his conversations with Mr. Davis.

11 All of that says one thing, Mr. Davis told Dr.
12 Haworth, Max made me do it, so I did it, because I didn't want
13 to lose him. That's not credible on its face for all of the
14 other reasons I've talked about, but what then made it laughable
15 was how Dr. Haworth sat right up here under oath and said:

16 Well, let me just be -- be sure you know, he never
17 presented it in a devil made me do it.

18 That's what that is, that's two pages of the devil
19 made me do it. I can't give that expert opinion much weight on
20 anything, that affects the credibility of everything Dr. Haworth
21 said.

22 (Pause at 5:41 p.m.)

23 THE COURT: Dr. Haworth's report said that:

24 Ryan showed no sexual interest in any category of
25 prepubescent child across genders.

1 That statement doesn't even apply to the facts of this
2 case, it could be from another case he had, I don't know, it
3 doesn't apply here, it's false.

4 Dr. Haworth then, naturally, found that that was well
5 within normative limits. Dr. Haworth said that:

6 The pattern of offending behavior, is not necessarily
7 the result of specific deviant arousal towards
8 prepubescent children.

9 Dr. Haworth actually wrote the following in his
10 report:

11 Ryan's drive to be wanted by Max and secure his
12 adulation and interest in him, overwhelmed his immature
13 judgment and capabilities, creating the path to his
14 offending. Once hooked, Ryan became desensitized to
15 sexual contact with children.

16 Dr. Haworth's findings are all based -- whether you'd
17 want to believe Max is a real person or not and I don't -- but
18 even if he was, they're all based on Ryan telling him this and
19 him just spitting back out onto a piece of paper.

20 And then, he gets on the stand and says:

21 I was -- Ryan never said, the devil made me do it.

22 Does that sound like that to you? That was his
23 report.

24 The minimization of what the defendant did to his
25 cousins, the contact offenses --

1 That was Dr. Haworth's shorthand for what he did to
2 his cousins.

3 -- were limited to his two small male cousins, whom he
4 had access to through babysitting and were limited in duration.
5 There is no evidence, he ever repeated such behavior with other
6 children.

7 Well, that's good. That's horrible. The fact that he
8 only did it a couple of times with his two small cousins,
9 because he got caught, that's what I'm asked to believe should
10 constitute the minimization of the conduct.

11 Yet a page or two later, Dr. Haworth says:

12 Ryan has remorse for his actions and has shown no
13 extreme minimization of the offense.

14 That's not true -- that's not true based on anything I
15 saw, read or heard around here.

16 His deviant behavior appears to be more situational
17 than having taken hold with him.

18 Dr. Zakireh, too, relies on everything Mr. Davis told
19 him about Max or Mike or Matt. He, too, didn't seek to verify
20 the reality of any of that. He, too, cites to Max for inducing
21 Mr. Davis to molest his young cousins.

22 Both of the experts conclude that he has a low to
23 moderate risk of recidivism. It didn't -- Ms. Rotella pointed
24 out the mistakes Dr. Haworth made on a very material aspect of
25 his report, by the way, the total score which then plays into a

1 prognostication about recidivism.

2 People make mistakes, I don't hold his mistake against
3 him, although he made, actually, multiple mistakes on the same
4 one number he was calculating and it was whether, it was a
5 three, a four or a five, not whether it was eight -- eight
6 million, six hundred and eighty-three versus some other high
7 number, okay. He made a mistake, people do, judges, too.

8 But what grabs you is, even as he bumps the score up,
9 he never alters the risk assessment. He can fiddle with the
10 numbers, but he can't fiddle with the conclusion, he explained
11 to me, why. I gave his testimony very little weight on that.
12 He was looking for a way to get to a desired end point.

13 Dr. Zakireh talked about how Mr. Davis has:

14 Manifested a relatively high level of responsibility
15 for his behavior.

16 There is nothing in this record which supports that
17 statement, nothing.

18 (Long pause at 5:48 p.m.)

19 THE COURT: To conclude with respect to the need to
20 protect the public, I -- I do come back to Dr. Rodriguez:

21 Overall, the defendant's risk of sexual violence
22 and recidivism for similar acts which led to his current
23 arrest is considered moderate to high at this time with
24 the recommendation that he'd be designated to a sex-
25 offender management program with a mixed prognosis --

1 mixed. And dysfunction features which would likely
2 prove resistant to significant change.

3 Dr. Rodriguez is concerned based on everything she saw
4 and her evaluation about the risk to the public that the
5 defendant would present. So, the need to protect the public
6 from further crimes he might commit is -- it is very high here,
7 it's very high.

8 I am required to consider the need to provide the
9 defendant with needed educational or vocational training,
10 medical care or other correctional treatment in the most
11 effective manner. There is no need to adjust his sentence for
12 any of that, the treatments he receives, particularly, when
13 designated by the BOP appropriately, should be provided over a
14 lengthy period of incarceration and supervised release.

15 The -- Mr. Davis has no health concerns, no addiction
16 concerns, which call to the -- to the Court's attention any need
17 to adjust the sentence.

18 I am required to consider whether the kinds of
19 sentences available could result in an unwarranted disparity.
20 The law wants us to make sure that we sentence a person,
21 appropriately, that the sentence that a person receives in my
22 courtroom or a sentence that a person receives in New Jersey for
23 the same conduct isn't wildly out of whack. So, we are asked to
24 be sure that that's not the case.

25 This sentence is within the advisory guideline range

1 for defendants, who commit these crimes, many of whom, by the
2 way, are first-time offenders with no history of actually
3 sexually abusing children, unlike, Mr. Davis.

4 So, I -- I see nothing to suggest that on the facts of
5 this case, a guideline sentence gives rise to any concerns about
6 unwarranted sentencing disparities.

7 (Pause at 5:51 p.m.)

8 THE COURT: I thought it was also very important that
9 Mr. Davis told both of his hired expert witnesses, that most of
10 the material he'd downloaded was adult pornography, that was a
11 very easily, objectively verifiable statement, that neither
12 doctor even looked into and as we know, it was a lie.

13 If he's lying to his own expert witnesses to help
14 develop an argument for mitigation of a potential sentence, it
15 just doesn't bode well for how he's going to do, separate and
16 apart from the experts not even -- not even -- looking into it,
17 it was easy, that was very easy to determine, yet Dr. Zakireh
18 says:

19 Flat out, lies are not predictive at all about
20 recidivism.

21 Imagine that, flat out lies are not predictive at all
22 about recidivism. Well then, why do we even interview anybody?
23 Of course, they're predictive about recidivism, the statement is
24 ridiculous on its face.

25 (Pause at 5:53 p.m.)

1 THE COURT: I asked Dr. Hawthorne (sic) a pretty
2 basic, pretty -- a pretty easy question, I was stunned, Ms.
3 Rotella didn't beat me to it.

4 If it turns out, Max never existed, Doctor, would
5 that in any way alter your report or your opinion in --
6 such as in assessing the defendant's acceptance of
7 responsibility and thus, prospects for rehabilitation or
8 recidivism?

9 No, he says, if it turns out that the entire reason
10 that Mr. Davis gave him for engaging in this horrific
11 conduct was a lie, it wouldn't affect his conclusion
12 about his acceptance of responsibility.

13 That alone just about disqualifies Dr. Zakireh (sic)
14 from being taken seriously.

15 As do the extent to which both experts went to avoid
16 acknowledging that Mr. Davis is a pedophile. They certainly had
17 all of the indicators, they just weren't going to say it,
18 because they couldn't.

19 But when you hear Dr. Rodriguez explain the diagnosis,
20 of -- of course, it's consistent with everything we know about
21 the case.

22 (Pause continues at 5:56 p.m.)

23 THE COURT: Pardon me, while I just review my notes to
24 make sure, I am addressing the points that Counsel made.

25 (Long pause continues at 5:59 p.m.)

1 THE COURT: I want to thank, again, everyone for
2 sending me their letters, I did read them and I took them to
3 heart, they were overwhelmed by the other evidence in the case,
4 but they were relevant to me.

5 I want to -- I want to, again, apologize to Ryan's
6 mother and his family and his friends and Mr. Justino for having
7 to hear that and having to hear everything that you've heard
8 today. I am required to explain why I feel the sentence I
9 announced is appropriate.

10 And I can't pull any punches when I'd do that, so that
11 a reviewing court can see, exactly, why I did what I did and I
12 apologize for having to get into that. And I know that this has
13 been a very painful day and very long day. And I -- I pray for
14 peace for all of you, I truly do.

15 Before I impose the sentence that I've outlined to the
16 lawyers, do either of you have any objections to any substantive
17 or procedural matters, are there any errors that you think I
18 made in articulating my sentence, is there anything you think, I
19 did not discuss?

20 MS. ROTELLA: No -- no, your Honor.

21 When the sentence is concluded, I would just ask that
22 the -- that the Court incorporate the forfeiture of the two
23 items that were seized from him as part of the --

24 THE COURT: At the close of business, we'll handle the
25 motion to dismiss Count 2 and the --

1 MS. ROTELLA: Okay.

2 THE COURT: -- forfeiture motion.

3 MS. ROTELLA: Thank you, that's all.

4 THE COURT: Mr. Patrizio?

5 MR. PATRIZIO: Judge, I -- I would -- I would like to
6 tell you, first of all, if I incurred wrath, I apologize, that's
7 number one.

8 What I was attempting to try to do, ah, and again, I'm
9 not attempting to incur your wrath, when I stated to you, that I
10 didn't know that Max would be such an issue, I did not think it
11 was something germane to the issue.

12 What I wanted to try to present, ah, as a result of it
13 becoming a centerpiece to a large extent of the testimony here
14 today, was that the initial offense, my client although there
15 is not a documented record, actually, went to the police
16 barracks --

17 THE COURT: I accept your apology.

18 MR. PATRIZIO: -- thank you, sir.

19 THE COURT: Are you sure, you'd want to revisit this
20 now?

21 MR. PATRIZIO: Ah, I -- I just wanted to -- I would --
22 I just wanted to --

23 (Discussion held off the record at 6:02 p.m.)

24 MR. PATRIZIO: My client wants to respect your
25 decision for now and wants me to not elaborate --

1 THE COURT: Okay.

2 MR. PATRIZIO: -- I feel that's important.

3 THE COURT: Thank you.

4 Then, if you and your client could please come
5 forward, we can impose the sentence.

6 MR. PATRIZIO: Yes.

7 (Pause at 6:03 p.m.)

8 THE COURT: Pursuant to the Sentencing Reform Act of
9 1984, it is the judgment of the Court, that the defendant, Ryan
10 Andrew Davis is hereby committed to the custody of the Bureau of
11 Prisons to be imprisoned for a term of 240 months on each of
12 Counts 1 and 3 to be served concurrently.

13 Upon release from imprisonment, the defendant shall be
14 placed on supervised release for a term of life on each of
15 Counts 1 and 3, such terms to be served concurrently.

16 Within seventy-two hours of release from the custody
17 of the Bureau of Prisons, the defendant shall report in person
18 to the Probation office in the district to which the defendant
19 is released.

20 While on supervised release, the defendant shall not
21 commit another federal, state or local crime. Shall be
22 prohibited from possessing a firearm or other dangerous device.
23 Shall not possess an illegal controlled substance and shall
24 comply with the other standard conditions that have been adopted
25 by this Court.

1 Based on the information presented, the defendant is
2 excused from the mandatory drug-testing provision, however, he
3 may be requested to submit to drug testing during the period of
4 supervision, if the Probation officer determines a risk of
5 substance abuse.

6 The defendant shall permit -- shall submit -- to the
7 collection of a DNA sample from the defendant at the direction
8 of the Probation office pursuant to Section 3 of the DNA
9 Analysis Backlog Elimination Act of 2000.

10 The defendant shall also comply with the following
11 special conditions:

12 He shall participate in a sex-offender program for
13 evaluation and treatment and abide by the rules of any such
14 program until satisfactorily discharged. While in the treatment
15 program, the defendant shall submit to risk assessment,
16 psychological testing and physiological testing, which may
17 include but not be limited to, polygraph or other specific tests
18 to monitor compliance with supervised release and treatment
19 conditions.

20 The defendant shall report to the Probation office any
21 regular contact with children of either sex under the age of
22 eighteen.

23 The defendant shall not obtain employment or perform
24 volunteer work, which includes regular contact with children
25 under the age of eighteen.

1 The defendant shall comply with the requirements of
2 the Sex Offender Registration and Notification Act as directed
3 by the Probation officer, the Bureau of Prisons or any state sex
4 offender registration agency in which he resides or is a student
5 or was convicted of a qualifying offense.

6 The defendant shall submit to an initial inspection by
7 the Probation office and to any examinations during supervision
8 of the defendant's computer and any devices, programs or
9 applications.

10 The defendant shall allow the installation of any
11 hardware or software systems which monitor or filter computer
12 use. He shall abide by the standard conditions of computer
13 monitoring and filtering that have been approved by this Court.

14 The defendant is to pay the cost of the computer
15 monitoring, not to exceed the monthly contractual rate in
16 accordance with the Probation office's discretion.

17 The defendant shall participate in a mental-health
18 program at the direction and discretion of the Probation office
19 and abide by the rules of any such program until satisfactorily
20 discharged.

21 The defendant shall provide the Probation office with
22 a full disclosure of his financial records to include yearly
23 income-tax returns upon the request of the Probation office. He
24 shall cooperate with the Probation officer in the investigation
25 of his financial dealings and shall provide truthful monthly

1 statements of his income.

2 The -- the defendant is prohibited from incurring any
3 new credit charges or opening additional lines of credit without
4 the approval the Probation officer, unless the defendant is in
5 compliance with a payment schedule for any special assessment or
6 restitution obligation.

7 The defendant shall not encumber or liquidate interest
8 in any assets, unless it is in direct service of the special
9 assessment or restitution obligation or otherwise has the
10 expressed approval of the Court.

11 Pursuant to 18 United States Code, Section 2259, the
12 defendant shall pay the agreed-upon amount between counsel for
13 the defendant and the Government, \$15,000.00 in restitution.
14 The Court will waive the interest requirement in this case.

15 Do we need to have anything specific in the J&C about
16 where that restitution is directed?

17 MS. ROTELLA: Yes, sir.

18 I believe, I filed under Exhibit I, my supplemental
19 memorandum, it was a chart, it includes who this amount should
20 be made payable to --

21 THE COURT: All right.

22 MS. ROTELLA: -- so, I'll just incorporate that.

23 THE COURT: We will do that and we'll put that in the
24 J&C, thank you.

25 MS. ROTELLA: Thank you.

1 THE COURT: Yes.

2 And, obviously, anything that's required to go on the
3 docket to the extent that they have information on the -- those
4 folks, will be sealed. Okay.

5 MS. ROTELLA: They're pseudo names, so, I think, we're
6 okay.

7 THE COURT: Okay.

8 I find the defendant does not have the ability to pay
9 a fine, I will waive the fine in this case. I also find the
10 defendant is indigent and does not have the ability to pay an
11 assessment for the Justice for Victims of Trafficking Act of
12 2015. The defendant shall, however, pay to the United States, a
13 total special assessment of \$200.00. The restitution and
14 special assessment are due immediately.

15 It is recommended that the defendant participate in
16 the Bureau of Prisons' Inmate Financial Responsibility program
17 and provide a minimum payment of \$25.00 per quarter toward the
18 amount due. In the event the entire amounts due are not paid
19 prior to the commence of supervision, the defendant shall
20 satisfy the amounts due in monthly installments of not less than
21 \$50.00 to commence thirty days after release from confinement.

22 The defendant shall notify the United States Attorney
23 for this district within thirty days of any change of mailing
24 address or residence that occurs while any portions of the
25 special assessment and restitution remain unpaid.

1 Mr. Davis, I've reviewed your guilty-plea agreement
2 and I know that you waived your right to appeal your sentence in
3 that guilty-plea agreement. You may appeal your sentence
4 consistent with that agreement, if you qualify under one of the
5 following four exceptions:

6 First, if the Government appeals your sentence, you
7 may appeal.

8 If your sentence would have exceeded the statutory
9 maximum penalty, you could appeal.

10 If the sentence imposed had departed upward pursuant
11 to the guidelines, you could appeal.

12 Or if the sentence imposed was a sentence above the
13 sentencing guideline range, you would have the right to appeal.

14 Additionally, when you pled guilty, you greatly
15 limited your right to collateral attack and *habeas corpus*,
16 except that you may file a petition under Section 2255 to raise
17 a claim of constitutionally-ineffective assistance of counsel.

18 For an appeal to be effective, you must file a Notice
19 of Appeal with the Clerk of Court no later than fourteen days
20 from the date the judgment is entered. Failure to file a Notice
21 of Appeal will result in your losing your right to appeal the
22 Court's sentence to the Court of Appeals.

23 You are also advised that you have a right to be
24 represented by counsel on an appeal and if you are financially
25 unable to hire private counsel, you may submit a financial

1 affidavit and if you qualify, the Court will appoint counsel to
2 handle your appeal.

3 Ms. Rotella, would you now like to move to dismiss
4 Count 2 of the indictment?

5 MS. ROTELLA: Yes, sir, I would.

6 And also -- I'm sorry, if I missed it -- but did you
7 incorporate the forfeiture?

8 THE COURT: I will now, we can -- we have the motion
9 for a final order of forfeiture, I assume, no objection thereto,
10 that was in the guilty-plea agreement as well.

11 MR. PATRIZIO: No objection.

12 THE COURT: All right.

13 We will enter the order on the motion for -- for a
14 forfeiture.

15 MS. ROTELLA: Thank you, your Honor.

16 THE COURT: And we'll dismiss Count 2 of the
17 indictment.

18 MS. ROTELLA: Thank you.

19 THE COURT: Are there any further matters anyone needs
20 to take up before we adjourned?

21 MR. PATRIZIO: Your Honor, would you recommend FCC
22 Devens?

23 THE COURT: That's -- thank you for reminding me of
24 that.

25 I know, obviously, that the BOP will do an assessment

1 and Ms. Rotella, you may be able to help me with this, but is
2 there any special recommendation I'd need to make for a
3 designation, be it, either, consistent with Dr. -- with what Dr.
4 Rodriguez thought appropriate or to make sure that he's in the
5 right place?

6 MS. ROTELLA: Sir, I -- I would say this, that I
7 think, it would help if the Court were to request from the
8 Bureau of Prisons, that he'd be designated to -- to take part
9 that Sex Offenders Management Program --

10 THE COURT: Yes.

11 MS. ROTELLA: -- the SOMP Program.

12 THE COURT: Yes.

13 MS. ROTELLA: I am not certain it's, you know, they
14 may choose -- that's operated in a number of different
15 facilities, so --

16 THE COURT: Okay.

17 MS. ROTELLA: -- that's really what the goal is
18 here --

19 THE COURT: Okay.

20 MS. ROTELLA: -- to make sure that he gets treatment.
21 And he can also say that if he's designated to that kind of
22 program closest to where he lives, so that means --

23 THE COURT: Which I think, the First Step Act will
24 take care of, anyway, right?

25 MS. ROTELLA: Yes, yes.

1 THE COURT: Yes, all right.

2 MS. ROTELLA: But I -- I think that would be helpful.

3 THE COURT: I -- I -- so, we'll make the
4 recommendation that he's designated to a place that has the Sex
5 Offender Management Program, SOMP, as Dr. Rodriguez -- and I
6 think, she testified that it's available at Devens and, at
7 least, one other place.

8 So, I'll make that recommendation and then the BOP
9 will make the appropriate assessment.

10 MR. PATRIZIO: Thank you.

11 THE COURT: Thank you for reminding me of that.

12 Is there anything else?

13 MS. ROTELLA: No, your Honor, thank you.

14 MR. PATRIZIO: Thank you.

15 THE COURT: We're adjourned.

16 DEPUTY CLERK: All rise.

17 (Adjourned in this matter at 6:13 p.m.)

18 * * *

19

20

21

22

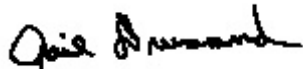
23

24

25

C E R T I F I C A T E

I, a court-appointed transcriber, certify
that the foregoing is a correct transcript from the
electronic-sound recording of the proceeding in the above-
entitled matter.



Gail Drummond
28 8th Avenue
Haddon Heights, New Jersey 08035
(856) 546-6270

Date: June 8, 2021